Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004	)	MB Docket No. 05-49
Implementation of Section 340 of the Communications Act	)	

REPLY COMMENTS OF ECHOSTAR SATELLITE L.L.C.

David K. Moskowitz
ECHOSTAR SATELLITE L.L.C.
Executive Vice President and General Counsel
9601 South Meridian Boulevard
Englewood, CO 80112
(303) 723-1000

Karen Watson
Ross Lieberman
ECHOSTAR SATELLITE L.L.C.
1233 20th Street, N.W.
Washington, D.C. 20036-2396

Pantelis Michalopoulos
Rhonda M. Bolton
Chung Hsiang Mah
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue NW
Washington, D.C. 20036-1795
(202) 429-3000

Counsel for EchoStar Satellite L.L.C.

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SUMMARY

Subscriber Eligibility Restrictions. The Commission should rebuff the broadcasters' efforts to severely limit the ability of satellite viewers to receive significantly viewed stations. Section 340(b)(1) does not require satellite carriers to carry the analog signal of the local network affiliate in order to import the analog signal of a significantly viewed station affiliated with the same network. The statute unambiguously states that the satellite carrier need only carry "a signal that originates as an analog signal of a local network station. . . ." Congress's use of the indefinite article "a" in this provision is determinative. In addition, the only purpose to be served by giving a satellite carrier the ability to import a significantly viewed network station is to overcome the likely objection of the local affiliate. With the local affiliate's consent, a satellite carrier could already import any distant station throughout a local market before the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). Since the only function of the new provision is to overcome the local affiliate's objections, it would be vitiated completely if objecting local stations could trump it.

Moreover, local stations that fail to begin digital broadcasting should not be rewarded with the unfettered ability to block importation of significantly viewed digital stations. Consistent with Congressional intent, satellite subscribers should not be deprived of receiving the digital signal of a significantly viewed network station simply because the local network station has inexcusably failed to meet its construction deadlines for providing digital service. The requirement of carrying the local digital signal assumes that the signal exists in the first place.

Defining "Community." The use of zip codes to approximate the boundaries of "communities," however that term is defined for purposes of significantly viewed stations, will

be a simple and accurate method for satellite carriers to approximate the boundaries of a community. Zip codes offer greater certainty than other approaches, as consumers will be able to easily determine whether they are eligible to receive significantly viewed stations or not, and disputes over boundaries will be limited. If more granularity is required, ZIP+4 codes can be used. A "significant overlap" rule can also be used to resolve discrepancies. In addition, the Commission should put it beyond doubt that use of zip code approximations is permissible, even when the result might be the inclusion of some ineligible subscribers and the exclusion of some eligible subscribers.

However, the Commission should reject the National Association of Broadcasters' ("NAB"'s) suggestion that, in areas where there is no pre-existing cable community, petitioners seeking to designate an area as a "community" for the purposes of carrying significantly viewed stations must demonstrate that the area has the necessary "indicia of community." There is no such requirement in the cable context and no such requirement should be applied in the satellite context.

Equivalent/Entire Bandwidth. The equivalent/entire bandwidth requirements should be interpreted so as not to import an unconstitutional multicast requirement into the significantly viewed rules. The relevant comparison should be between the primary video feeds of each station. EchoStar agrees with DIRECTV that satellite carriers should be allowed to use different bit rates and different compression schemes to transmit each signal, as long as there is no perceptible difference in the picture viewed by the subscriber -- the obvious concern underlying the equivalent bandwidth rule. In addition, where the local station transmits in high-definition ("HD") for only part of the day, the satellite carrier should not be expected to track the formats of local stations at every point in time and to calibrate the format in which it is carrying

the significantly viewed station. Rather, it should be allowed to import the significantly viewed station's HD feed without any temporal limitations. Indeed, this result is compelled by the "entire bandwidth" rule as applied to the primary video feeds of each station.

Waivers. The waiver provisions in 47 U.S.C. § 340(b)(4) and 17 U.S.C. § 119(a)(3)(C) should be reconciled without rendering one provision a nullity. As the Supreme Court has recently reiterated, "It is . . . 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" Accordingly, the language in 17 U.S.C. § 119(a)(3)(C) that deems a waiver request as granted if the broadcaster does not act upon it within 30 days should be given full effect and should not be nullified simply because similar language does not appear in 47 U.S.C. § 340(b)(4).

Allegations of Errors on the SV List. As the Commission explained in the NPRM: "We seek comment here only about whether the SV List accurately reflects such existing significantly viewed determinations, and not about whether the SV List should be modified because of a change in a station's circumstances subsequent to its placement on the SV List." Accordingly, to the extent that commenters have requested the removal of particular stations from the SV List because of changed circumstances, such requests are outside the scope of the NPRM. Such requests should instead be brought under the new de-listing process to be established by the Commission.

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REPLY COMMENTS OF ECHOSTAR SATELLITE L.L.C.

EchoStar Satellite L.L.C. ("EchoStar") hereby submits its reply to comments filed in the above-captioned Notice of Proposed Rulemaking ("NPRM") regarding the carriage of significantly viewed stations under the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA").[1] EchoStar confines its reply only to those arguments raised by other commenters that have not already been adequately addressed in EchoStar's comments.

I. THE COMMISSION SHOULD REBUFF BROADCASTERS' EFFORTS TO SEVERELY LIMIT THE ABILITY OF SATELLITE VIEWERS TO RECEIVE SIGNIFICANTLY VIEWED STATIONS

Several of the broadcasters' proposals are obviously geared to limit, to the greatest possible extent, the number of satellite viewers that are eligible to receive significantly viewed signals. The Commission should summarily reject such proposals, as they clearly frustrate the intent of Congress that significantly viewed signals be made widely available to

[1] *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act*, FCC 05-24, Notice of Proposed Rulemaking, MB Docket No. 05-49 (rel. Feb. 7, 2005) ("NPRM").

satellite subscribers in communities where they are popular. Congress wanted this availability to be subject only to the retransmission consent of the significantly viewed station itself, not to the consent of the local station that does not want a competing channel retransmitted.

A. The NAB Blatantly Misreads SHVERA's Subscriber Eligibility Requirements In An Attempt To Limit The Categories Of Subscribers That Are Eligible For Significantly Viewed Service

Perhaps the boldest effort by broadcasters to block the implementation of the significantly viewed provision is the National Association of Broadcasters' ("NAB") misreading of SHVERA's subscriber eligibility requirements in an effort to limit the categories of satellite subscribers that are eligible for significantly viewed service.[2] First of all, the NAB disputes the Commission's reading of the analog local service limitation in Section 340(b)(1), attempting to interject a "same network" requirement into the statute where there is none. The NAB's claims that "a condition precedent to delivery of a duplicating significantly viewed out-of-market station is that a subscriber 'receive' the local affiliate."[3]

This is inconsistent with the plain language of Section 340(b)(1). The law says: "With respect to a signal that originates as an analog signal of a network station, this section shall apply only to retransmissions to subscribers of a satellite carrier who receive retransmissions of a signal that originates as an analog signal of a local network station from that satellite carrier pursuant to section 338."[4]

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[2] *See* Joint Comments of the National Association of Broadcasters and of the ABC, CBS, FBC, and NBC Television Affiliate Associations, *filed in* MB Docket No. 05-49 (filed Apr. 8, 2005) ("NAB Comments").

[3] NAB Comments at 17.

[4] 47 U.S.C. § 340(b)(1).

The first and most fundamental problem with the NAB's interpretation is that the statute does not use the definite article "the," but rather only requires receipt of "a" local network station. Short of changing that language, it is impossible to translate this into a requirement that the subscriber receive "*the*" station affiliated with the same network.[5] The references to "a" signal of "a" local network station mean that this signal may originate from any of the local network stations that the satellite carrier carries -- not that that the signal must emanate from a particular station, namely the one affiliated with the same network as the significantly viewed station.[6] There is no ambiguity here.

Even if the statute's language were not plain, the NAB's interpretation would render the significantly viewed provision a nullity, contrary to a well-settled rule of statutory interpretation.[7] The only purpose to be served by giving a satellite carrier the ability to import a significantly viewed network station is to overcome the likely objection of the local affiliate. If that were not the case, there would be no need for the provision. With the local affiliate's consent, a satellite carrier could import any distant station throughout a local market, without the need to resort to the significantly viewed provision. Since the only function of the provision is to overcome the local affiliate's objections, it would be vitiated completely if objecting local stations could trump it. Yet that would be the result if local network stations could defeat the

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[5] *See United States v. Hudson*, 65 F. 58, 71 (D. Ark. 1894) ("'The' is the word used before nouns, with a specifying or particularizing effect, opposed to the indefinite or generalizing force of 'a' or 'an.'"); *Brooks v. Zabka*, 450 P. 2d 653, 655 (Colo. 1969) ("It is a rule of law well-established that the definite article 'the' particularizes the subject which it precedes. It is a word of limitation as opposed to the indefinite or generalizing force of 'a' or 'an.'").

[6] *See*, *e.g.*, *Fleming v. Moberly Milk Production*, 160 F.2d 259 (D.C. Cir. 1947) ("'A given time' means 'any given time.'").

[7] *See Alaska Department of Environmental Conservation v. Environmental Protection Agency*, 540 U.S. 461, 489 n.13 (2004).

importation of a significantly viewed affiliate by withholding retransmission consent. For that same reason, the Commission's interpretation is also sound as a policy matters. In sum, the Commission has correctly concluded that Congress would not have adopted SHVERA's significantly viewed provisions only to then empower broadcasters to completely thwart satellite subscribers' access to such signals.[8]

And the same reasoning undercuts Gulf-California Broadcasting's contention that significantly viewed service should be blocked where a local broadcast station is ineligible for carriage under Section 338 because that station is a low power or Class A station.[9] The plain language of Section 340(b)(1) provides that significantly viewed stations can be imported whenever the satellite carrier carries at least one local network station under Section 338. What Gulf-California appears to be advocating is for an entire local market to become ineligible for satellite significantly viewed service if one local station in the market is low power, Class A, or otherwise not eligible for must carry. This cannot be what Congress intended. Qualified satellite subscribers should not be deprived of significantly viewed service simply because of the type of license that a local broadcaster holds. Equally unavailing is Gulf-California's plea that low power and Class A stations will be "drive[n] . . . out of business" by satellite significantly viewed service. Significantly viewed stations are ones that are already available to viewers over-the-air and to cable customers, with the latter commanding the lion's share of multichannel video programming distributor ("MVPD") subscribers. They were available to cable customers even when the cable system was the only MVPD in town, before the advent of Direct Broadcast Satellite ("DBS") service. Given that all MVPD subscribers could have access to significantly

[8] *See* NPRM at ¶ 39.

[9] *See* Comments of Gulf-California Broadcast Company at Part III, *filed in* MB Docket No. 05-49 (filed Apr. 8, 2005).

viewed stations before DBS existed, it is difficult to imagine that extending the flexibility to provide such stations to cable's younger competitors would expose low-power or Class A stations to jeopardy.

B. Local Stations That Fail To Begin Digital Broadcasting Should Not Be Rewarded With The Unfettered Ability to Block Importation of Significantly Viewed Digital Signals

The NPRM asks about situations where a local network station is present in the market but is not broadcasting in digital format. In such situations, Section 340(b)(2) would appear to prohibit a satellite carrier from importing the digital signal of a significantly viewed station affiliated with the same network on the basis that the local network station is not being carried in digital format. However, in the Commission's view, the legislative history of SHVERA suggests that Congress intended to treat differently stations whose failure to broadcast in digital is not excused by the Commission, *i.e.* the prohibition on the importation of significantly viewed stations only applies when the local station's failure to broadcast in digital is excused by the Commission.[10]

Consistent with Congressional intent, satellite subscribers should not be deprived of receiving the digital signal of a significantly viewed network station simply because the local network station has inexcusably failed to meet its construction deadlines for providing digital service. Indeed, the requirement should not apply in any case where the digital signal of the local network affiliate is not being received by the subscriber for the simple reason that it does not exist in the first place. The most sensible interpretation of the statute therefore is that, where the local station does not broadcast in digital at all, the digital service limitation is inapplicable.

[10] NPRM at ¶ 49 n.133.

II. THE COMMISSION MUST ADOPT A METHOD OF DEFINING COMMUNITIES THAT SATELLITE OPERATORS ARE CAPABLE OF UTILIZING

As EchoStar discussed in its Comments, the use of zip codes to approximate the boundaries of "communities," however that term is defined for purposes of significantly viewed stations, will be a simple and accurate method for satellite carriers to approximate the boundaries of a community. Zip codes offer greater certainty than other approaches, as consumers will be able to easily determine whether they are eligible to receive significantly viewed stations or not, and disputes over boundaries will be limited. If more granularity is required, ZIP+4 codes can be used. A "significant overlap" rule can also be used to resolve discrepancies.

While DIRECTV also proposes to define non-county communities by zip code,[11] it appears to be taking an unduly conservative approach with respect to zip codes that do not fall entirely within such a community. In particular, DIRECTV states that it would "deny service to eligible subscribers in order to avoid providing service to ineligible subscribers" unless "SHVERA can be interpreted otherwise."[12] In other words, DIRECTV would not provide significantly viewed service to a subscriber unless he or she lived in a zip code that is entirely within a community boundary. This would unduly diminish the number of subscribers who would be eligible to receive significantly viewed stations. In addition, DIRECTV's position is somewhat surprising as DIRECTV has apparently been using Nielsen-developed zip code-based DMAs to qualify their subscribers for local-into-local service -- a practice that has been upheld by the Media Bureau.[13] EchoStar believes that the Commission should put it beyond doubt that

[11] Comments of DIRECTV, Inc. at 6, *filed in* MB Docket 05-49 (filed Apr. 8, 2005) ("DIRECTV Comments").

[12] DIRECTV Comments at 7.

SHVERA permits satellite carriers to use zip code-based definitions of communities for the carriage of significantly viewed stations.

The competitive "imbalance" between cable and satellite that NAB altruistically fears might arise from the use of zip codes[14] concerns incremental number of subscribers and in any event can be rectified simply recognizing that all MVPDs have the same flexibility.

The NAB also argues that "satellite community" should have a socioeconomic meaning, suggesting that a petitioner seeking to designate an area where there is no pre-existing cable community as a "satellite community" would have to demonstrate that the area has the necessary "indicia of community." The NAB's proposal should be rejected. No such requirement applies in the cable context -- cable operators do not have to prove that an area partakes of the socioeconomic aspects of a community. Accordingly, if the NAB were truly interested in cable/DBS parity, no such requirement should apply in the satellite context either. The point of allowing MVPDs to carry significantly viewed stations is so that viewers who live in areas where a particular station is "significantly viewed" over the air can continue to access those stations if they choose to subscribe to an MVPD. What is important, therefore, are the viewing patterns of the people who live in a particular area and not whether they consider themselves a "community."

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[13] *See New York Times Management Services v. DIRECTV, Inc.*, 19 FCC Rcd 12070 (2004) (approving DIRECTV's use of Nielsen Zip Code Index even though the zip code-based boundaries did not match up exactly with Nielsen's county-based DMA boundaries). DIRECTV states that it has begun upgrading its system so that it can identify and authorize subscribers for local-into-local service using county-based DMA maps. DIRECTV Comments at 4-5.

[14] NAB Comments at 12 ("There is no corresponding concept of zip codes in the cable context, and it would create a competitive imbalance between the two industries to permit satellite delivery of significantly viewed signals in a community which has no meaning or legal significance to cable systems -- and never will.").

III. A PRACTICAL FRAMEWORK SHOULD BE DEVELOPED FOR THE EQUIVALENT/ENTIRE BANDWIDTH REQUIREMENTS

As EchoStar explained in its Comments, the equivalent/entire bandwidth requirements should be interpreted so as not to import an unconstitutional multicast requirement into the significantly viewed rules.[15] In other words, the relevant comparison should be between the primary video feeds of each station -- *i.e.*, if the satellite carrier is carrying the primary video feed of the significantly viewed station in high-definition ("HD"), then it must also carry the local station's primary video feed in HD if available or in standard definition ("SD") if that is the format in which the local station is transmitting its primary video feed. A significantly viewed station electing to broadcast in HD format should not be hostage to the local station's decision to multicast. Consistent with the Commission's decision that distributors do not have the obligation to carry more than the primary feed of a multicaster, the concern about discrimination that underlies the equivalent bandwidth rule should extend only to the multicaster's first feed.

EchoStar agrees with DIRECTV that the "equivalent" and "entire" bandwidth requirements does not require satellite carriers to retransmit the local and significantly viewed signals at the exactly the same bit rate or using the same compression scheme. Indeed, Section 340(i)(4) provides that the terms "equivalent bandwidth" and "entire bandwidth" must, among other things, "not be construed to -- (A) prevent a satellite operator from using compression technology; (B) to require a satellite operator to use the identical bandwidth or bit rate as the local or distant broadcaster whose signal it is retransmitting; [or] (C) to require a satellite operator to use the identical bandwidth or bit rate for a local network station as it does for a distant network station . . . ." This means that Congress intended a substantial equivalence,

[15] Comments of EchoStar Satellite L.L.C. at 14-15, *filed in* MB Docket 05-49 (filed Apr. 8, 2005).

which would accommodate different bit rates and different compression schemes, as long as there is no perceptible difference in the picture viewed by the subscriber.[16]

Where stations transmit in different formats during different parts of the day, the application of the "equivalent" and "entire" bandwidth requirements is relatively straightforward if the relevant comparison, as EchoStar contends, is between the primary video feeds of the two stations. Certainly, where the satellite carrier is only carrying the primary video feed of the significantly viewed station in SD format (either because that station only transmits in that format or because of downconversion), neither the "equivalent" or "entire" bandwidth requirements require the satellite carrier to carry the local network station's primary video feed in any better format (subject to any applicable must-carry requirements). Conversely, if the significantly viewed station is transmitting in HD all day and is being carried in that format, then the satellite carrier would have to carry the local network station's primary video feed in HD when it is available (as required by the "equivalent bandwidth" requirement) or otherwise in SD (as required by the "entire bandwidth" requirement).

A potential issue arises when both the significantly viewed and local network stations are transmitting in HD and SD formats in different parts of the day and the satellite carrier is carrying the primary video feed of such stations "as is." There may be times in which the significantly viewed station is in SD while the local network station is in HD, and vice versa. In these cases, it would be entirely unreasonable to expect a satellite carrier to track the formats of local stations at every point in time and to calibrate the format in which it is carrying the

[16] The FCC has adopted a similarly robust approach to "material degradation" in the context of the cable digital must-carry rules. *See Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules*, 16 FCC Rcd 2598, 2629 ¶ 72 (2001) ("From our perspective, the issue of material degradation is about the picture quality the consumer receives and is capable of perceiving and not about the number of bits transmitted by the broadcaster if the difference is not really perceptible to the viewer.").

significantly viewed station. Accordingly, where the local station transmits in HD for any part of the day, this should mean that the satellite carrier is allowed to import the significantly viewed station's HD feed without any temporal limitations. Indeed, this result is compelled by the "entire bandwidth" provision as applied to the primary feeds of each station. Under that provision, satellite carriers can retransmit a significantly viewed digital station if "the retransmission of the local network station is comprised of the entire bandwidth of the digital signal broadcast by such local network station."[17] In other words, if the primary video feed of the local network station comprises only an SD signal, the satellite carrier need only carry that signal in order to retransmit the HD feed of the significantly viewed station.

IV. OTHER ISSUES RAISED BY COMMENTERS

A. The Waiver Provisions in 47 U.S.C. § 340(b)(4) and 17 U.S.C. § 119(a)(3)(C) Should Be Reconciled Without Rendering One Provision a Nullity

The NAB points to some apparent differences between the waiver requirements introduced by SHVERA in Section 340(b)(4) of the Communications Act and Section 119(a)(3)(C) of the Copyright Act. The former requires waivers of restrictions on retransmissions of significantly viewed stations to be "privately negotiated and affirmatively granted," while the latter provides that broadcasters are "deemed to agree" to the waiver request if they fail to respond within 30 days. In addition, waivers granted under Section 119(a)(3)(C) sunset on December 31, 2008 but no similar sunset applies to waivers under Section 340(b)(4).

The NAB tries to have the best of both worlds by arguing that the waivers of significantly viewed restrictions must meet the requirements of both provisions, resulting in the most restrictive reading possible for these waiver provisions. In other words, NAB argues that

[17] 47 U.S.C. § 341(b)(2)(B).

waivers must be affirmatively granted under Section 340(b)(4) and, moreover, such waivers expire on December 31, 2008 pursuant to Section 119(a)(3)(C). However, such an interpretation would totally nullify the language in Section 119(a)(3)(C) whereby waivers are deemed to be granted if the broadcaster fails to respond within 30 days. As the Supreme Court has recently reiterated, "It is . . . 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"[18]

Accordingly, the NAB's proposed interpretation should be rejected. Instead, the Commission should give effect to the "deemed to agree" language in Section 119(a)(3)(C). Such an interpretation is to be preferred as it would preserve a role for the "affirmatively granted" language in Section 340(b)(4) as waivers can still be affirmatively granted (or denied) ahead of the 30 day deadline under Section 119(a)(3)(C). That resolution of the inconsistencies gives maximum effect to both waiver provisions introduced by SHVERA and is thus the interpretation most consistent with well established canons of statutory interpretation. In addition, such an interpretation would not require broadcasters to change their expectations of how satellite subscriber waiver requests typically work. They should already be familiar with the waiver process that has been in place for the unserved household restriction. Under that process too, a broadcaster is deemed to agree to a waiver request if it fails to respond within 30 days.[19]

[18] *Alaska Department of Environmental Conservation*, 540 U.S. at 489 n.13 (quoting *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) and *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

[19] *See* 47 U.S.C. § 339(c)(2).

B. Allegations of Errors on the SV List

For a variety of reasons, several broadcasters (and numerous of individual commenters) have alleged errors on the Significantly Viewed List ("SV List") and have requested corrections. However, as the Commission explained in the NPRM: "We seek comment here only about whether the SV List accurately reflects such existing significantly viewed determinations, and not about whether the SV List should be modified because of a change in a station's circumstances subsequent to its placement on the SV List."[20]

Thus, to the extent that commenters have sought to remove particular stations from the SV List because of recent survey data or Grade B contour information (*e.g.*, Saga Broadcasting, Inc. ("Saga")),[21] such corrections are outside the purview of the Commission's request for corrections to the list. Such requests should instead be brought under the new de-listing procedure to be established by the Commission,[22] and must meet the criteria for waivers of the significantly viewed station exception to the cable programming exclusivity rules.[23] In any event, it is unclear whether the viewership data provided by Saga meet these requirements.

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[20] NPRM at ¶ 14.

[21] *See* Comments of SAGA Broadcasting, Inc. at 4-8, ex's 1 and 2 (presenting recent viewing data provided by Nielsen and Grade B contour maps), *filed in* MB Docket No. 05-59 (filed Apr. 8, 2005).

[22] *See* EchoStar Comments at Section IV (urging the adoption of a simple delisting procedure rather than the proposed convoluted scheme proposed in the NPRM at ¶ 26).

[23] Namely, it must be demonstrated that, for two consecutive years, a station was no longer significantly viewed based either on community-specific or system-specific non-cable viewing data, to one standard error. For each year, the data for such a finding must be obtained as a result of independent professional surveys taken during two one-week periods separated by at least 30 days, no more than one of which may be taken between April and September of each year. In addition, if the survey covers more than one community, the sample must be proportionately distributed among the relevant communities. *See* NPRM at ¶ 25 n.77.

The Commission should also not countenance a request for removal of significantly viewed stations based on a claim of "localism," as NPG of Oregon, Inc. argues.[24] The detailed statutory provisions and regulations establishing the criteria for carriage of significantly viewed stations cannot be trumped by a generalized appeal to the policy of favoring "localism." In any event, it is not the kind of correction to the SV List that the Commission is contemplating in this proceeding, as it is not based on significantly viewed determinations previously made by the Commission.

WHEC-TV, LLC ("WHEC") alleges that certain New York City Stations (WCBS-TV, WNBC-, WNYW, WABC-TV and WWOR-TV) were not in the original 1972 SV List for the community of Rochester, New York and should not have been included in the current SV List.[25] It appears, however, that the New York City Stations referred to by WHEC were determined by the Mass Media Bureau in 1990 to be significantly viewed in the Town of Rochester.[26]

WGAL Hearst-Argyle Television, Inc., alleges that a certain station call sign included in the SV List as a significantly viewed station in certain Pennsylvania communities had in fact been reassigned from its original station to a new station located elsewhere.[27]

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[24] *See* Comments of NPG of Oregon, Inc., *filed in* MB Docket No. 05-49 (filed Apr. 8, 2005).

[25] Comments of WHEC-TV, LLC at 2, *filed in* MB Docket No. 05-49 (filed Apr. 8, 2005).

[26] *See* Public Notice, *Cable Television Actions*, Report No. 3271, 1990 FCC LEXIS 2432 (rel. May 1, 1990) (announcing a March 8, 1990 decision to grant the request of Simmons Communications Co. to confer significantly viewed status on the New York City Stations in, *inter alia*, the Town of Rochester).

[27] Comments of WGAL Hearst-Argyle Television, Inc. at 1-2, *filed in* MB Docket No. 05-49 (filed Apr. 8, 2005).

Essentially, a request to remove a station from the SV List on this ground would be based on changed circumstances and not on existing Commission determinations. As a result, such stations should remain on the SV List unless and until properly removed through the de-listing process.

EchoStar notes that it plans to rely on the SV List and to retransmit any and all stations listed regardless of such claims, unless and until the station is properly removed from the list by the Commission.

V. CONCLUSION

EchoStar urges the Commission to take these reply comments into account in developing rules regarding satellite carriage of significantly viewed stations.

Respectfully submitted,

/s/

David K. Moskowitz
Executive Vice President and General Counsel
ECHOSTAR SATELLITE L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112
(303) 723-1000

Karen Watson
Ross Lieberman
ECHOSTAR SATELLITE L.L.C.
1233 20th Street, N.W.
Washington, D.C. 20036-2396

Pantelis Michalopoulos
Rhonda M. Bolton
Chung Hsiang Mah
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000

Counsel for EchoStar Satellite L.L.C.

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